

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 22, 2008 appellant then a 61-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed degenerative disc disease and stenosis due to factors of her employment, including repetitive lifting. She noted that she first became aware of her condition on September 24, 2002 and realized its relation to her federal employment on June 11, 2006. OWCP accepted appellant's claim for lumbosacral spondylosis without myelopathy at levels L2, L3, L4, and L5-S1 and later expanded the acceptance of her claim to include L4 radiculopathy, right, and Guillain-Barre syndrome. Appellant was paid on the periodic rolls effective December 21, 2008. She retired on October 24, 2008.

In a benefits election form dated August 12, 2014, appellant elected to receive FECA benefits.

On February 6, 2020 OWCP sent a FERS/SSA dual benefits form to SSA.

On February 28, 2020 OWCP received a completed FERS/SSA dual benefits form from SSA wherein SSA advised that appellant received SSA disability benefits for the periods February 2009 through January 2010 and December 2011 through November 2012. SSA reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from February 1, 2010 through November 30, 2011 and from December 1, 2012 through December 31, 2019. Beginning February 2010 and December 2010, the SSA rate with FERS was \$1,101.80 and without FERS was \$151.30. Beginning December 2012, the SSA rate with FERS was \$1,431.20 and without FERS was \$159.30. Beginning December 2013, the SSA rate with FERS was \$1,452.60 and without FERS was \$161.60. Beginning December 2014 and December 2015, the SSA rate with FERS was \$1,477.20 and without FERS was \$164.30. Beginning December 2016, the SSA rate with FERS was \$1,481.60 and without FERS was \$164.70. Beginning December 2017, the SSA rate with FERS was \$1,511.20 and without FERS was \$167.90. Beginning December 2018, the SSA rate with FERS was \$1,553.50 and without FERS was \$172.60. Beginning December 2019, the SSA rate with FERS was \$1,578.30 and without FERS was \$175.30.

On May 18, 2020 OWCP prepared a FERS offset overpayment calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from February 1, 2010 through November 30, 2011 and December 1, 2012 through April 25, 2020 and computed a total overpayment amount of \$138,838.36. This form indicated that beginning February 1, 2010 through November 30, 2010 appellant received an overpayment in the amount of \$9,494.55. Beginning December 1, 2010 through November 30, 2011, she received an overpayment in the amount of \$11,437.34. Beginning December 1, 2012 through November 30, 2013, appellant received an overpayment in the amount of \$15,304.73. Beginning December 1, 2013 through November 30, 2014, she received an overpayment in the amount of \$15,534.56. Beginning December 1, 2014 through November 30, 2015, appellant received an overpayment in the amount of \$15,798.08. Beginning December 1, 2015 through November 30, 2016, she received an overpayment in the amount of \$15,841.36. Beginning December 1, 2016 through November 30, 2017, appellant received an overpayment in the amount of \$15,846.21. Beginning December 1, 2017 through November 30, 2018, she received an overpayment in the amount of \$16,167.49. Beginning December 1, 2018 through November 30, 2019, appellant received an overpayment in

the amount of \$16,616.32. Beginning December 1, 2019 through April 25, 2020, she received an overpayment in the amount of \$6,797.70.

On May 18, 2020 OWCP issued a corrected preliminary overpayment determination.² It informed appellant that she received an overpayment of compensation in the amount of \$138,838.00, for the periods February 1, 2010³ through November 30, 2011 and December 1, 2012 through April 25, 2020, because she received SSA age-related retirement benefits that were partially based on credits earned while working in the Federal Government, and this constituted a prohibited dual benefit. OWCP determined that she was without fault in the creation of the overpayment. It requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, and advised her that she could request waiver of recovery of the overpayment. OWCP further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records that support income and expenses. Additionally, it provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On June 15, 2020 appellant submitted an overpayment action request form and requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She noted that she disagreed that the overpayment occurred and with the amount of the overpayment, and requested waiver because she was found to be without fault. Appellant stated that she did not understand how the overpayment occurred and that repayment would result in extreme financial hardship.

In a Form OWCP-20 dated June 10, 2020, appellant reported that her total monthly income included \$3,377.40 from FECA and \$1,433.00 from SSA for herself, resulting in total monthly income of \$4,810.40. She reported expenses totaling \$4,078.55. Appellant indicated monthly expenses of \$1,500.00 for support payment to her husband, \$200.00 for food, \$100.00 for clothing, \$578.75 for utilities, and other expenses of \$3,199.60. She further noted cash on hand of \$134.00 and a checking account balance of \$25,000.00. Appellant attached financial information including bank statements from April 26, 2018 through October 28, 2019, and state and federal tax returns for 2018 and 2019.⁴

² OWCP had initially issued a preliminary overpayment determination on April 1, 2020. The May 18, 2020 preliminary overpayment determination corrected the amount of the overpayment because the FERS adjustment deduction was not taken for the last periodic roll period.

³ The preliminary overpayment determination noted this date as January 1, 2010, however that appears to be a typographical error.

⁴ Appellant also submitted a Form OWCP-20 dated April 24, 2020 and reported that her total monthly income included \$3,377.40 from FECA and \$1,433.00 from SSA for herself, resulting in total monthly income of \$4,810.40. She reported expenses totaling \$7,454.16. Appellant indicated monthly expenses of \$1,500.00 for support payment to her husband, \$250.00 for food, \$58.80 for clothing, \$350.00 for utilities, and other expenses of \$475.00, and warranty on car repairs of \$2,365.00. She further noted a checking account balance of \$25,000.00.

On January 15, 2021 OWCP held a telephonic prerecoupment hearing. Appellant testified that she received FECA benefits and \$1,433.00 in SSA benefits. She reported expenses of \$1,500.00 a month to her ex-husband, \$200.00 for food, \$100.00 for clothing, 578.75 for utilities,⁵ and \$3,199.60 in miscellaneous items. Appellant did not account for the miscellaneous expense, but indicated that she had it available in case of needed repairs or personal items. She reported \$11,000.00 in her checking account and \$4,165 in an individual retirement account. The hearing representative advised appellant that a breakdown and explanation of the miscellaneous expenses was necessary and informed her that she could submit the necessary information after the hearing. The record was held open for 30 days for submission of additional financial evidence. OWCP did not receive any further evidence.

By decision dated February 25, 2021, the hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$138,838.00 for the periods February 1, 2010 through November 30, 2011 and December 1, 2012 through April 25, 2020, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. OWCP further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. It required recovery of the overpayment by payment in full.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁶ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁷

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁸ FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA age-related retirement benefits earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁹

⁵ Appellant reported \$505.00 for utilities, \$170.00 for electricity, \$150.00 for water, \$125.00 for a heater, and \$60.00 for telephones.

⁶ 5 U.S.C. § 8102(a).

⁷ *Id.* at § 8116.

⁸ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁹ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$138,838.00, for the period February 1, 2010 through November 30, 2011 and December 1, 2012 through April 25, 2020, for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA retirement benefits attributable to federal service for the same period.¹⁰ The record supports that appellant received FECA wage-loss compensation on the periodic rolls beginning December 21, 2008. Appellant received SSA age-related retirement benefits beginning February 1, 2010. The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service commencing February 1, 2010 through November 30, 2011 and December 1, 2012 through April 25, 2020. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.¹¹

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to appellant's specific SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS for specific periods February 1, 2010 through November 30, 2011 and December 1, 2012 through April 25, 2020. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$138,838.00. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$138,838.00 for the periods February 1, 2010 through November 30, 2011 and December 1, 2012 through April 25, 2020.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹²

Recovery of an overpayment will defeat the purpose of FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do

¹⁰ *Supra* note 9; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

¹¹ *Id.*

¹² 5 U.S.C. § 8129.

not exceed a specified amount as determined by OWCP.¹³ An individual is deemed to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴

Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁵

Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁷

Evidence in the case record shows that appellant received FECA benefits of \$3,377.40 and \$1,433.00 in SSA benefits. She reported expenses of \$1,500.00 a month to her ex-husband, \$200.00 for food, \$100.00 for clothing, 578.75 for utilities, and \$3,199.60 in miscellaneous items. Appellant did not account for the miscellaneous expense, but indicated that she had the funds available in case of needed repairs or personal items. The hearing representative advised appellant that a breakdown and explanation of the miscellaneous expenses was necessary and provided her an additional 30 days to submit such evidence; however, no additional evidence was submitted. Therefore, appellant did not submit sufficient financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or be against equity

¹³ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2020).

¹⁴ *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019); *id.* at Chapter 6.400.4.a(3).

¹⁵ 20 C.F.R. § 10.437(a)(b).

¹⁶ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁷ 5 U.S.C. § 8129.

and good conscience. She had the responsibility to provide financial information to OWCP,¹⁸ but failed to do so.

Accordingly, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.

With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits.¹⁹ As appellant was not in receipt of continuing compensation benefits, the Board does not have jurisdiction over the method of recovery of the overpayment in this case.²⁰

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$138,838.00, for the period February 1, 2010 through November 30, 2011 and December 1, 2012 through April 25, 2020, for which she was without fault, because she concurrently received FECA wage-loss compensation benefits and SSA age-

¹⁸ *Id.* at § 10.438; *S.P.*, Docket No. 19-1318 (issued July 31, 2020).

¹⁹ *L.L.*, Docket No. 19-0097 (issued March 20, 2020); *A.B.*, Docket No. 18-0915 (issued October 24, 2018).

²⁰ *See id.*; *Miguel A. Muniz*, 54 ECAB 217 (2002); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

related retirement benefits without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board